

G. Silverman Declaration
Exhibit 7

ORIGINAL

1

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF NEW YORK

3
4 JASON WEMES,

5 Plaintiff,

6 vs.

Civil Action No. 6:22-cv-06297

7 THE CANANDAIGUA NATIONAL BANK

8 & TRUST COMPANY,

9 Defendant.
10

11
12 This is the Examination Before Trial of

13 **KRISTY MERRIMAN**

14 taken on Monday, September 30, 2024,

15 held at the Canandaigua National Bank &

16 Trust, 72 South Main Street,

17 Canandaigua, New York, commencing at

18 10:40 a.m., concluding at 10:55 a.m.,

19 taken before Tonia L. Tinker, Court

20 Reporter and Notary Public in and for

21 the State of New York.
22
23
24
25

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APPEARANCES :

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Attorneys for Plaintiff

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Geneva, New York 14456

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UNDERBERG & KESSLER, LLP

Attorneys for Defendant

300 Bausch & Lomb Place

Rochester, New York 14604

BY: RYAN T. BIESENBAACH, ESQ.

Also Present:

Jason Wemes

Michelle Pedzich

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1 **FEDERAL STIPULATIONS:**

2

3 IT IS HEREBY STIPULATED AND AGREED by and

4 between the attorneys for the respective parties

5 hereto that this deposition may be taken by Counsel

6 for Plaintiff at this time;

7 IT IS FURTHER STIPULATED, that all objections

8 except as to the form of the questions and

9 responsiveness of the answers be reserved until the

10 time of the trial;

11 IT IS FURTHER STIPULATED, that pursuant to

12 Federal Rules of Civil Procedure 30(3)(1) the

13 witness requests to review the transcript and make

14 any corrections to same before any Notary Public;

15 IT IS FURTHER STIPULATED, that if the original

16 deposition has not been duly signed by the witness

17 and returned to the attorney taking the deposition

18 by the time of trial or any hearing in this cause, a

19 certified transcript of the deposition may be used

20 as though it were the original;

21 IT IS FURTHER STIPULATED, that the attorneys

22 for the parties are individually responsible for

23 their certified transcript charges, including any

24 expedite or other related production charges.

25

1 K R I S T Y M E R R I M A N ,
2 having been first duly sworn by a Notary
3 Public within and for the State of New York,
4 was examined and testified as follows:

5 EXAMINATION

6 BY MR. SILVERMAN:

7 Q. Good morning, Ms. Merriman. As I said, my
8 name is Greg Silverman. I'm an attorney
9 representing Jason Wemes in his litigation against
10 the bank.

11 Have you ever been deposed before?

12 A. No.

13 Q. So this is not an adversarial kind of
14 event. I'm just here to ask you questions about
15 what you know, what you have personal knowledge
16 about.

17 A. Okay.

18 Q. We have a court reporter here. She will be
19 taking down what we say, and so I will just ask that
20 you let me finish my question and I will let you
21 finish your answer without interruption so she can
22 make a clean transcript.

23 A. Okay.

24 Q. The testimony you provide here today is the
25 same you might provide in the court. You are under

1 oath. And I will ask you to listen carefully to my
2 question and then provide an accurate, truthful,
3 thorough response.

4 A. Okay.

5 Q. If you don't understand anything I say,
6 please let me know. I will do my best to repeat or
7 rephrase. And if you need a break at any time, let
8 me know.

9 A. Okay.

10 Q. If you would like to change your answer or
11 add to your answer at any time today, do so.

12 And is there any reason you're aware of
13 that you can't provide accurate and truthful
14 testimony today?

15 A. Not that I'm aware of.

16 Q. Wonderful. I will put a document in front
17 of you marked as Exhibit 3. Have you seen this
18 document before?

19 (Exhibit Number 3 was marked for
20 identification.)

21 A. I have, yes.

22 BY MR. SILVERMAN:

23 Q. Okay. This was the subpoena you were
24 provided?

25 A. Yes.

1 Q. The reason you are here today?

2 A. Yes.

3 Q. Are you represented by counsel today?

4 A. No.

5 Q. Before this deposition, did you speak with
6 anyone about the testimony you will provide today?

7 A. No.

8 Q. Did you speak with Ms. Pedzich or
9 Mr. Biesenbach?

10 A. Yes.

11 Q. What did you speak about with them?

12 A. Basically, just asking if I -- stating
13 that, you know, I was probably going to be deposed
14 and just kind of updating me on why.

15 Q. I understand. Did you talk about what you
16 might talk about here today?

17 A. No.

18 Q. Are you -- do you have any concerns about
19 the risk of retaliation based on your testimony
20 today?

21 A. No.

22 Q. Besides Ms. Pedzich and Mr. Biesenbach,
23 have you talked about the testimony you will provide
24 today with anyone else?

25 A. No.

1 Q. Before today and to prepare for today's
2 deposition, did you review any documents?

3 A. I did not, just this. I mean, this is the
4 only thing I have received.

5 Q. And that's Exhibit 3, the subpoena?

6 A. Yes.

7 Q. Ms. Merriman, can you tell me when you
8 started working with the bank?

9 A. November of 2016.

10 Q. And what was your position?

11 A. When I started at the bank, I was a float
12 SFR.

13 Q. And what's a float SFR?

14 A. It's just a banker, so just, you know,
15 assisting customers with products and services.

16 Q. What does SFR stand for?

17 A. Financial service representative.

18 Q. And what is your current title today?

19 A. I'm a branch manager.

20 Q. In 2001, what was your title with the bank?

21 A. I was not here in 2001.

22 Q. Sorry. Good answer. You're listening
23 carefully.

24 What was your title in 2021?

25 A. I was the assistant branch manager.

1 Q. And what were your duties as the assistant
2 branch manager in 2021?

3 A. So my duties were to, obviously, assist
4 customers with products and services as well as
5 assist with leading a team at the main office.

6 Q. And in 2021, who was your supervisor?

7 A. Deborah Rought.

8 Q. When you were working at the bank, did you
9 interact with Jason Wemes much?

10 A. I did. I mean, yeah.

11 Q. What were your -- strike that.

12 Why did you interact with Mr. Wemes?

13 A. He was also an employee at the main office,
14 so we would see each other periodically from time to
15 time. I think I might have actually helped him a
16 couple of times personally as well with just
17 different products and services.

18 Q. When you say personally with different
19 products and services, what do you mean?

20 A. He came to me for assistance with his
21 either accounts or looking for something. So I
22 assisted him like I would anyone else that would
23 come and ask for assistance and guidance.

24 Q. Okay. I want to rewind to June 29, 2021.
25 There was law enforcement present at the bank that

1 day. Do you recall that?

2 A. Yes.

3 Q. Did you interact with law enforcement that
4 day?

5 A. I did.

6 Q. And how did you first interact with them?

7 A. So an undercover person came in and said
8 who they were, and they had actually showed me a
9 photo on a phone asking me if I saw this person walk
10 through.

11 Q. Okay. I'm going to show you what's been
12 marked as Exhibit 2. I will represent these are
13 floor plans of the bank that I was provided.

14 Can you tell me, there are a couple of
15 pages in Exhibit 2, but can you tell me where you
16 were when you first interacted with law enforcement?

17 (Interruption.)

18 BY MR. SILVERMAN:

19 Q. Just to go back, you're looking at a
20 document that's been marked as Exhibit 2 and I asked
21 you to point out where you were when you first
22 interacted with law enforcement on June 29, 2021.

23 A. So if I'm looking at this, I think it's
24 over by 144 and 142. I think that's the main office
25 area. If that's the case, I would have been sitting

1 in 142, I believe.

2 Q. Okay.

3 A. I'm thinking that that's the main office
4 right there.

5 Q. So when you interacted with law
6 enforcement, you were at your desk at 142?

7 A. I was at my desk, yeah.

8 Q. Got it. Do you recall how many people --
9 strike that.

10 Was it one person who said they were
11 undercover law enforcement? Was it multiple?

12 A. I recall that it was just one individual.

13 Q. Do you recall what that individual looked
14 like?

15 A. No.

16 Q. So I think you testified that individual
17 introduced themselves as undercover law enforcement,
18 correct?

19 A. Correct.

20 Q. They showed you a badge; is that what you
21 said?

22 A. Correct.

23 Q. And they showed you a picture?

24 A. Correct.

25 Q. Okay. What did that picture look like?

1 A. I don't recall. I don't recall the person
2 in the picture.

3 Q. Okay. When law enforcement showed you that
4 picture, what did they say?

5 A. They, basically, said that we are looking
6 for an individual that might have walked through
7 here, and they showed me the picture and asked if I
8 had seen that person.

9 Q. And what did you say?

10 A. I said no.

11 Q. Do you have any recollection whatsoever of
12 what that person in the picture that you were shown
13 looks like?

14 A. No.

15 Q. Did that person in the picture look like
16 Jason Wemes?

17 A. No.

18 Q. After you told law enforcement that you had
19 not seen the person in the picture, what happened?

20 A. I called our security just to let them know
21 that there was a person that came in and of the
22 situation.

23 Q. Okay. You called security and who did you
24 talk to?

25 A. I believe it was -- it's been a while, but

1 I believe it was Jason Ingalls.

2 Q. And what did he say?

3 A. He just said, "Thank you for letting me
4 know."

5 Q. Okay. When you called security, where was
6 the law enforcement person who showed you the
7 picture?

8 A. I do not know.

9 Q. So they had left your office?

10 A. Yes.

11 Q. Understood. You called Mr. Ingalls, he
12 said, "Thanks for letting me know," correct?

13 A. Uh-huh.

14 Q. What else did you talk with Mr. Ingalls
15 about on that phone conversation?

16 A. I don't recall having any other
17 conversation with him. I was just letting him know
18 of the situation that had happened.

19 Q. Understood. After you called security, did
20 you have any other conversations with anyone about
21 law enforcement's presence at the bank that day or
22 why they were there?

23 A. I don't recall. I think I recall letting
24 my supervisor know of the situation.

25 Q. And who was that?

1 A. Deborah Rought.

2 Q. Thank you.

3 A. But that's all I recall.

4 Q. How did you communicate with Ms. Rought?

5 A. I walked into her office.

6 Q. And do you recall what that conversation
7 consisted of?

8 A. I just recall just letting her know of the
9 situation of the person coming in, what had
10 happened. I also let her know that I reached out to
11 security to let them know also.

12 Q. What did Ms. Rought say?

13 A. "Thank you." I mean, there was really
14 nothing else she needed to say, just as long as I
15 was doing my job of letting the appropriate people
16 know who was in the office.

17 Q. I understand. Did you see, from your
18 vantage point from your office which we looked at on
19 Exhibit 2, did you ever see law enforcement again in
20 the building?

21 A. I do not recall seeing anybody else.

22 Q. After -- so you went and told Ms. Rought.
23 After that, did you ever speak with anyone again
24 about law enforcement's presence at the bank that
25 day, whether it was Mr. Ingalls, Deb Rought, or

1 anyone?

2 A. No.

3 Q. I want to go back to the picture that law
4 enforcement showed you. You testified that you
5 don't recall what that individual looks like,
6 correct?

7 A. Correct.

8 Q. Do you recall -- if you don't recall what
9 that individual looked like, do you recall the scope
10 of the picture? Was this a full-body shot? Was it
11 just the head? Head and shoulders?

12 A. I don't recall.

13 Q. Were you ever aware that Jason Wemes was
14 suspended shortly after law enforcement's presence
15 that day?

16 A. No.

17 Q. Did you ever become aware that Jason Wemes
18 was terminated a couple weeks after law enforcement
19 was present that day?

20 A. No.

21 Q. Did you ever text or email with anyone
22 about law enforcement coming in and showing you that
23 picture?

24 A. I do not recall.

25 Q. Do you think you could have?

1 A. I don't think so.

2 Q. Is there anything else relevant to law
3 enforcement's presence that day or Jason Wemes that
4 you think I should know?

5 A. No.

6 MR. SILVERMAN: Off the record.

7 (Brief recess.)

8 MR. SILVERMAN: I have no further
9 questions. Thank you.

10 (The deposition of Kristy Merriman
11 was concluded.)
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1 **AFFIDAVIT:**

2

3 STATE OF NEW YORK

4 COUNTY OF _____

5

6

7 I have read my deposition, and the

8 same is true and accurate, save and except

9 for changes and/or corrections, if any,

10 as indicated by me on the correction sheet

11 attached hereto.

12

13 _____

14 KRISTY MERRIMAN

15

16

17 SUBSCRIBED AND SWORN TO before me this

18 _____ day of _____, 20____.

19

20

21 _____

22 NOTARY PUBLIC

23

24 My commission expires on _____.

25

ERRATA SHEET:

Case: Jason Wemes v. Canandaigua National Bank

Witness: Kristy Merriman

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[illegible]

1 **CERTIFICATION:**

2 STATE OF NEW YORK

3 COUNTY OF STEUBEN

4 I, TONIA L. TINKER, the officer before whom the
5 foregoing deposition was taken, do hereby certify
6 that the witness whose testimony appears in the
7 foregoing deposition was duly sworn by me.

8 I further certify that the testimony of said
9 witness was taken by me in Stenotype and thereafter
10 reduced to typewriting under my supervision.

11 I further certify that the said deposition
12 constitutes a true record of the testimony given by
13 said witness to the best of my ability.

14 I further certify that the said deposition was
15 taken before me at the time and place specified in
16 the notice.

17 I further certify that I am neither counsel
18 for, related to, nor employed by any of the parties
19 to the action in which this deposition was taken,
20 nor financially or otherwise interested in the
21 outcome of the action.

22 

23 _____
24 TONIA L. TINKER, Notary Public
25

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